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NEAL, GERBER, & EISENBERG			HOLLOWAY, JASON R	
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2 NORTH LASALLE STREET			ART UNIT	PAPER NUMBER
CHICAGO, IL 60602			3633	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/550,404	TEICHNER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	JASON HOLLOWAY	3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 September 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
  - 4a) Of the above claim(s) 11-14 and 23-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 15-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 September 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 27 August 2008 and 19 January 2007.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species 1, claims 1-10 and 15-22 as depicted by figure 9 of the drawings in the reply filed on 8 January 2009 is acknowledged. The traversal is on the ground(s) that the species of figures 9 and 13 do not present a serious burden to the examiner. This is not found persuasive because the embodiments of figures 9 and 13 require a number of patentably distinct features. For instance, the bracket of figure 9 requires hangers and includes distinct members used to connect the brackets to a hanger, while the bracket of figure 13 includes an intermediate and rear support member which negates the need for a hanger. Further, the embodiment of figure 13 includes a diagonal bore for receiving a nail which is not required in the embodiment of figure 9.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

2. The drawings are objected to because the numbering of figures is inconsistent. The drawings begin with figures "A" and "B" then proceed to figures 3, 4, etc. Further, it appears figures 1 and 2 are missing from the drawing set. The specification and claims make reference to items which are supposed to be in figures 1 and 2, however, these figures have not been provided.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gutter, hanger,

front wall, rear wall, bottom wall, and fascia must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

***Claim Objections***

5. Claims 1, 7, 21 and 22 are objected to because of the following informalities:

In claim 1, the recitation “a portion of the gutter cover the forms a fold” of line 6 needs to be reworded in order to be properly understood.

Claims 7, 21 and 22 contain misspellings of the word “hanger.”

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “mullion” in claim19 is used by the claim to mean “corner

connector", while the accepted meaning is "a vertical member which divides window panels." The term is indefinite because the specification does not clearly redefine the term.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-6, 9-10 and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Richard (6,732,477).

**Regarding claims 1 and 9,** Richard teaches a gutter system having a gutter attached to a fascia board of a structure (fascia plank 60), the gutter further including a front wall (front wall 62), a bottom wall (bottom 61), a rear wall (rear wall 63) and a gutter opening (opening of trough 9) and a hanger (hanging strap 75) positioned perpendicular to the fascia board (as illustrated in figures 1, 10 and 11), comprising: a bracket (truss shaped mounting block 3 of figures 6, 7 and 10-12) positioned perpendicular to the front wall of the gutter capable of attaching the gutter to the fascia board coupled to the hanger (hanging strap 75; as illustrated in figure 10), the bracket including a coupling member (inwardly curved end 34 of figures 6, 7 and 12); and

a gutter cover positioned to cover the gutter opening (gutter cover 2 of figures 9 10 and 11 covers the opening), including a portion of the cover that forms a fold (as illustrated in figure 9, a fold is formed via hooked frontal edge 22, longitudinal flange 23 and curvature 24 of figures 9 and 10);

wherein the gutter cover (cover 2) is coupled to the bracket (3) by inserting the coupling member of the bracket within the fold (as illustrated in figure 10, inwardly curved end 34 of the bracket is coupled within the fold of the cover member 2).

**Regarding claims 2 and 15,** Richard teaches the gutter cover (2) further comprises a front section (flat sheet 21), a middle section (ridge 7 of figure 9 is disposed in the middle of the cover) and a back section (rear flange 8), and at least one edge (as illustrated in figure 9, cover 2 comprises 4 edges) wherein a lip section (via hooked frontal edge 22, longitudinal flange 23 and curvature 24) is integrally formed by the front section and extends into the gutter opening (as illustrated in figure 10, 22-24 are formed integral with the cover and extend into the trough opening).

**Regarding claim 3, 4 and 17,** Richard teaches a protrusion (ridge 7 of figures 9 and 10) extends from the gutter cover (2) enough to impede water flow to the gutter and extends substantially the entire length of the gutter cover (as illustrated in figures 9 and 10).

**Regarding claim 5,** Richard teaches the bracket further comprises a front member (front rafter 39), a base member (as labeled in examiner amended figure 12a following this action), an intermediate member (as labeled in figure 12a), a rear member (as labeled in figure 12a) and a central wall portion (as labeled in figure 12a), wherein

the coupling member (inwardly curved end 34) is integral to and extends from the intermediate member (as illustrated in figures 6-7, 10-12 and labeled in figure 12a coupling member 34 is integral to the intermediate member).

**Regarding claims 6 and 16,** Richard teaches the front member is formed to cooperate with and provide structural support to the lip section (as illustrated in figure 10, the front portion as labeled in figure 12a provides structural support to hooked frontal edge 22, longitudinal flange 23 and curvature 24 of the cover member).

**Regarding claim 10,** Richard teaches the bracket further comprises:

a base member having a first side and a second side (as labeled in figure 12a);  
a front member and a rear member integrally formed on the base member and extending from the first side thereof proximate to the front wall (the entire mounting block is one integral piece therefore the sections are integrally formed; as illustrated in figure 12a, the front and rear members are on top of the base member and extend from the first side of the base; as illustrated in figure 10, the front member is proximate the front wall 62 of the gutter and the rear member is proximate the rear wall 63 of the gutter);

a central wall portion (as labeled in figure 12a) integrally formed from the base member, the front member and the rear member (front, base and rear members as labeled in figure 12a) and positioned between the front member and the rear member (as illustrated in figures 10 and 12a);

an intermediate member (of figure 12a) integrally formed on the front member, the central wall portion and the rear member, wherein the coupling member (34) is

integral to and extends from the intermediate member (as illustrated in figures 6-7 and 10-12, coupling member 34 is integral to the intermediate member, as labeled in figure 12a).

**Regarding claim 18,** Richard teaches the intermediate member (as labeled in figure 12a) of the bracket (mounting block 3) abuts the gutter cover (2) (as illustrated in figure 10, intermediate member and cover are in contact).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 7-8, 18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richard (6,732,477).

**Regarding claims 7 and 22,** Richard teaches the base member includes an integrally formed horizontal rectangular slot 31 in the base of the mounting block and the slot secures the mounting block 3 to the hanging strap 75 (as illustrated in figure 10).

However, Richard fails to disclose the bracket is secured to the hanger by inserting pins formed on the bracket into apertures formed on the hangar.

It would have been obvious to one of ordinary skill in the art to connect the mounting blocks to the hanging straps using pins rather than a slot on the mounting block where the hanging member is slid into the slot since it is notoriously known in the

art to use pins to connect two structural members together and it would have necessitated only routine skill in the art to substitute the connection of Richard with the pin connection as claimed. Further, it would have been obvious to use a pin connection to connect the mounting block to the hanging member of Richard since it would have been cheaper to use a pin/aperture connection than the horizontal slot connection.

**Regarding claim 8,** Richard teaches the central wall portion (as labeled in figure 12a) comprises at least one aperture (as illustrated in figures 6, 7, 10-12 and 12a, rear and front rafter 37 and 39 comprise an aperture between them).

**Regarding claim 20,** Richard teaches all the limitations of the claim as previously addressed in claims 1-6, 9-10 and 15-17 above.

A plurality of gutter covers was not addressed in the previous claim rejections, however, Richard teaches a plurality of gutter covers (column 6 lines 33-39; the recitation "...sum of section lengths is that is approximately the length of a sum of section lengths of the trough..." teaches multiple gutter cover sections to cover multiple gutters).

A plurality of brackets was not addressed in the previous claim rejections, however, it would have been obvious to one of ordinary skill in the art to include multiple mounting blocks since there are multiple sections of gutter covers. Further, it would have been obvious to one of ordinary skill in the art to include multiple brackets since it has been held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced (*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

**Regarding claim 21,** Richard teaches a hanger couples the gutter to the fascia (60), wherein each of the brackets is removably secured to a hanger (removably secured via rectangular slots 31 in the base of mounting block 3 which accepts the hanging straps 75; as illustrated in figures 1 and 10).

Richard fails to disclose a plurality of hanging straps, however it would have been obvious to include multiple hanging straps since there are multiple gutter sections provided. Further, it would have been obvious to one of ordinary skill in the art to include multiple hanging straps since it has been held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced (*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

13. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richard (6,732,477) in view of Seise, Jr. (here forth Seise) (US 2004/0244303).

**Regarding claim 19,** Richard teaches all the claim limitations of lines 1-5 of claim 19 of the instant invention as addressed in claims 1 and 9 above.

Further, Richard teaches it is well known in the art to provide a gutter system with cornering pieces (column 2 lines 52-56).

However, Richard fails to disclose a corner piece which connects gutter covers comprising the limitations as claimed by Applicant.

Seise teaches a corner piece for connecting two gutter covers (roofline segments 206 and 208 of cover assembly 204) having a first and second half having a first and second front section, a first and second middle section, a first and second rear section

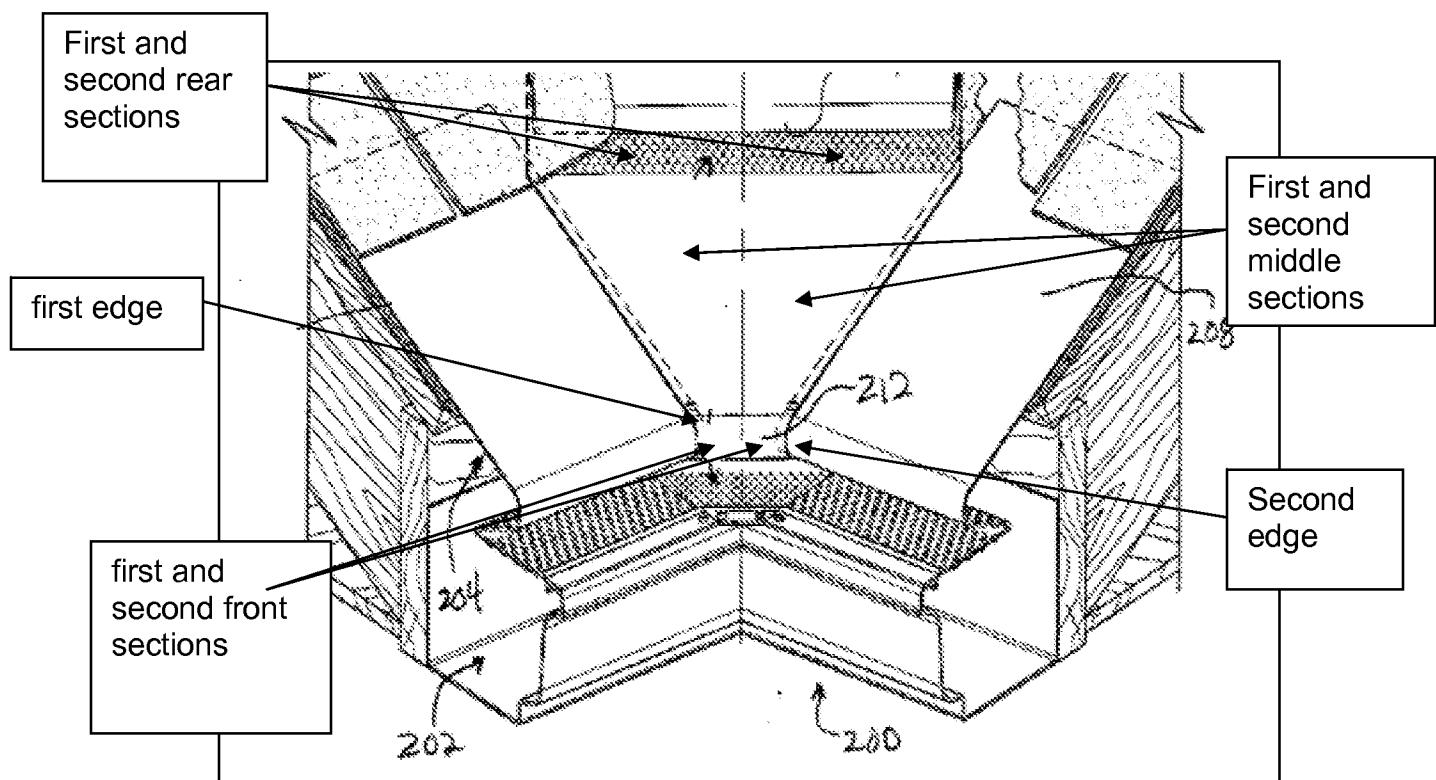
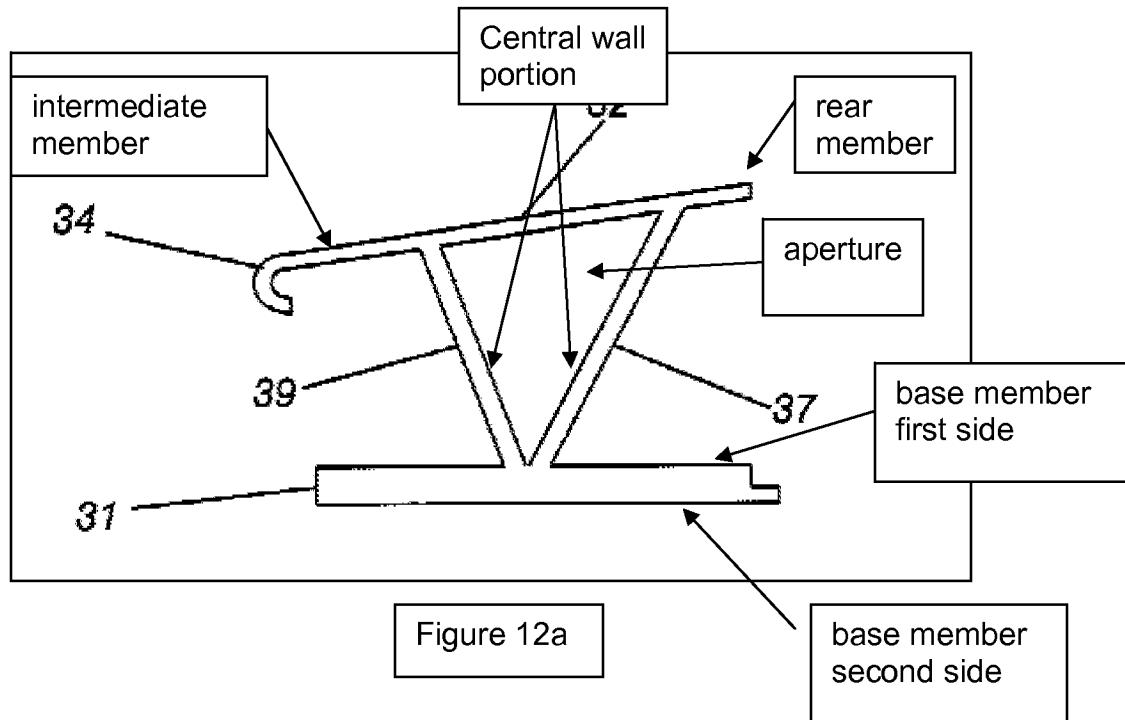
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and a first and second edge (first and second members are labeled in examiner amended figure 6a following this action), wherein the first and second front sections are capable of engaging and cooperating with the lip section (as illustrated in figure 6 and 6a, the front sections cooperate with the equivalent lip sections of the gutter covers of Seise), and wherein the first and second edges form first and second channels capable of receiving an edge of the first and second gutter covers (a channel is formed in the first and second front sections of the mullion which accepts the edges of the gutter covers); and

wherein the first half and the second half are joined at an angle relative to one another (as illustrated in figures 6 and 6a, the first and second halves are joined at an angle); and

wherein the corner mullion is positioned between the two gutter covers (cover assembly 204), which are adjacent and at an angled relation to one another (as illustrated in figures 6 and 6a, the two gutter covers are adjacent to one another).

Therefore, from the teaching of Seise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the gutter cover of Richard to include an appropriately fitting corner connecting piece as taught by Seise in order to provide an intermediate piece to connect gutter covers at building corners.



***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

McDonald et al. (6,993,870 and 6,931,792) teaches a gutter guard and bracket.

Morandin et al. (5,617,678) teaches a gutter guard and hanger system. Knudson (5,845,435) teaches support devices for gutters. Baker (US 2002/0073631 and 6,681,527) teaches a gutter bracket screwed to a hanger. Annestedt, Sr. (5,819,476) teaches a gutter cover mounting clip. Richard et al. (6,993,871) teaches a gutter cover and bracket. Schoenherr (5,570,860) teaches a gutter bracket. Snell (2005/0082436) teaches a gutter cover hanger with apertures. Higgins (6,658,796) teaches a gutter bracket connected to a hanger.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HOLLOWAY whose telephone number is (571) 270-5786. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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